

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

PAUL E. PARTRIDGE,  
PAUL E. PARTRIDGE, JR.

*Plaintiffs,*

V.

APPLICA CONSUMER PRODUCTS, INC.,  
BRINK'S HOME SECURITY, INC.

*Defendants.*

Civil Action No. 05-10601-MLW

**DEFENDANT BRINK'S HOME SECURITY, INC.'S MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), defendant Brink’s Home Security, Inc. (“Brink’s”) moves to dismiss the complaint filed by plaintiffs Paul E. Partridge and Paul E. Partridge, Jr. As grounds for this motion, Brink’s states as follows:

1. The Complaint is barred by the applicable limitations period.
2. Plaintiffs' claim for breach of express warranty (Count I) must be dismissed because Brink's has expressly disclaimed liability for this cause of action.
3. The Complaint fails to state a claim for breach of the implied warranties of merchantability and fitness for a particular purpose (Counts II and III).
4. Pursuant to LR 7.1(B)(1) and in support of its motion, Brink's offers the accompanying memorandum of law and affidavit of Don Breaux.

WHEREFORE, Brink's respectfully requests that this Court dismiss this action in its entirety and grant such other and further relief as is deemed to be just and fair.

BRINK'S HOME SECURITY, INC.

By its attorneys,

/s/ Jillian B. Hirsch

Jonathan I. Handler, BBO #561475

Jillian B. Hirsch, BBO #659531

DAY, BERRY & HOWARD LLP

260 Franklin Street

Boston, MA 02110-3179

(617) 345-4600

Dated: April 18, 2005

**RULE 7.1(A)(2) CERTIFICATION**

The undersigned counsel hereby certifies that on Friday, April 15, 2005 and Monday, April 18, 2005 counsel for defendant Brink's Home Security, Inc. ("Brink's") called counsel for plaintiffs to confer and attempt in good faith to resolve or narrow the issues raised by this motion. On both occasions, Brink's counsel was unable to reach counsel for plaintiffs.

/s/ Jillian B. Hirsch  
Jillian B. Hirsch

**CERTIFICATE OF SERVICE**

I, Jillian B. Hirsch, do hereby certify that on the 18th day of April, 2005 I served the within **Brink's Home Security, Inc.'s Motion to Dismiss** by causing a copy to be mailed, first class postage prepaid and addressed to counsel for plaintiffs, Jason E. Cohn, Tommasino & Tommasino, Two Center Plaza, Boston, MA 02810, and counsel for defendant Applica Consumer Products, Inc., Geoffrey Coan, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, 155 Federal Street Boston, MA 02110.

/s/ Jillian B. Hirsch  
Jillian B. Hirsch